

ADVISORY OPINION 91-20 [1991-12]

The Ethics Commission has received your request for advice dated August 6, 1991. Your request relates the following facts: You are the Chief of a Division of a principal office that provides health related services directly to clients. A private donor has donated hardware and software development to automate data collection for a program that is operated by the Division you head. The estimated value of the gift is \$500,000. The Chief Administrative Officer has approved this gift. The donor has requested to remain anonymous. You have indicated that the donor does not do business with Montgomery County.

As part of the software development, the Division's staff meets with the donor and provides user input and ideas for software development. The donor has indicated a desire to give monetary awards of up to \$100 each to those County employees who present creative ideas for software development. You have asked whether, under the ethics law, the employees of the Division may accept such an award.

Finally, you indicated that you were uncertain as to who would own the software after its development. Accordingly, it is uncertain whether the donor would be able to market the software to other entities. For purposes of this advice, the Commission has assumed that the donor will retain ownership of the software and would be able to license it to other users for compensation.

Section 19A-16(c)(4) of the Montgomery County Public Ethics Law provides that a public employee must not accept a gift from an individual or organization that "has an identifiable economic interest that is different from that of the general public, which the public employee may substantially affect in performing the public employee's official duties."¹ The Commission finds that Section 19A-16(c)(4) applies to this situation because: (1) the Division's employees are providing input and ideas to the donor as part of the employee's official duties; and (2) the input provided by the employees could substantially affect an identifiable economic interest of the donor that is different from that of the general public.

Accordingly, the Commission finds that it would not be appropriate for employees of the County to accept monetary awards from the donor.

The Ethics Commission trusts that it has responded to your inquiry. This opinion confirms the oral response previously given to you. If you have further questions, please do not hesitate to contact the Commission.

Date of Issue: 9/25/91

¹ Unless otherwise indicated, section references are to the Montgomery County Code (1984).